



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI- 82-106

You are the Town Counsel for the Town of ABC (Town) and have submitted to the Commission a request for an advisory opinion over the application of G.L.c. 268A, s.20[1] as most recently amended by St. 1982, c. 107,[2] on behalf of a Town school teacher who was recently elected as a member of the Town Board of Selectmen. In 1981, following the enactment of St. 1981, c. 430,[3] the Town classified the position of selectmen as a "special municipal employee" under G.L.c. 268A, s.1(n). As a result, you advised a Town school teacher in January, 1982 that the receipt of compensation for the positions of teacher and selectman was permissible under s.20, subparagraph (c), since, as a selectman, the individual did not participate in or have official responsibility for the activities of the School Committee. Inasmuch as the May, 1982 amendment to s.20 specifically prohibits the receipt by a selectman of compensation for more than one office or position, you ask whether the amendment, in effect, repeals the prior application of s.20 to selectmen who have been classified as special municipal employees. The Commission advises you that it does not.

Although the Commission does not ordinarily render advisory opinions over the application of G.L.c. 268A to municipal employees and will instead refer municipal questions to Town Counsel under G.L.c. 268A, s.22, the Commission deems it appropriate to render an opinion on the question of law which you have raised. Since May, 1982 the Commission has received several comparable inquiries from municipal officials and Town Counsels over the interpretation of G.L.c. 268A, s.20 in light of the enactment of St. 1982, c. 107. The opinion which you seek would therefore be of general application and would provide a uniform interpretation to communities similarly situated. See, EC-COI-80-89; 82-25. In rendering this opinion, the Commission has relied upon the facts as you have stated them and has not made any independent investigation of those facts.

Prior to the enactment of St. 1981, c. 430, a Town selectman could not lawfully receive compensation as a Town school teacher under G.L.c. 268A, s.20, since the less restrictive provisions of s.20 which would be otherwise applicable to special municipal employees were not available to members of the Town board of selectmen. Following the enactment of St. 1981, c. 430, the Town availed itself of the opportunity to classify its selectmen as special municipal employees because the Town's population did not exceed the statutory limit of 5000. Accordingly, Town selectmen thereafter could lawfully receive compensation for their teaching services for the Town.

During the 1982 legislative session, the General Court considered proposals to permit teachers to serve as selectmen under s.20. The proposals were filed in response to the Commission's 1980 advisory opinion EC-COI-80-89 and *Walsh v. Love*, Norfolk

Superior Court Civil Action No. 132687 (July 2, 1981), which had held that the teacher selectman arrangement violated s.20. During the legislative consideration of House Doc. No. 1657, the House of Representatives adopted language amending s.20 which; in all substantive respects, was enacted into law as St. 1982, c. 107. The new language expressly permits town employees to hold the office of selectman but adds the condition that the selectman may receive compensation for only one town office or position. The Commission concludes that the new language inserted by St. 1982, c. 107 was intended to apply only to those selectmen who were previously prohibited from receiving compensation for a second municipal office or position and not to selectmen who had been classified as special municipal employees under s.1(n). This conclusion is based not only on the limited corrective purpose of the new amendment but also on a rule of statutory construction which rejects an implied repeal of previously enacted legislation, in this case St. 1981, c. 430.[4] Moreover, the Commission's interpretation is consistent with its answers to similar questions which were posed following the passage of the so called "municipal exemption," St. 1981, c. 10. In EC-COI-80-102 and 80-72, the Commission found that the amendment left unchanged the provisions of s.4 relative to special state employees. The Commission's conclusions in this case harmonize the effect of recent amendments to the status of selectmen who wish to serve simultaneously as teachers in the same community and reflect the Commission's obligation to give G.L.c. 268A a workable meaning. See, *Graham v. McGrail*, 370 Mass. 133, 140 (1976).

#### DATE AUTHORIZED:

[1] G.L.c. 268A, s.20 provides, in pertinent part, as follows:

(a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

This section shall not apply:

(c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests on his immediate family in the contract...

[2] This most recent amendment adds the following language to s.20:

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office. Provided that no such member may vote or act on any matter which is within the purview of the agency by which, he is employed or over which he has official responsibility, and provided further that no member shall be eligible for appointment to such additional position while a member or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling

the action on such terms as the interest of the municipality and innocent third parties require. No such selectman shall receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive.

[3] St. 1981, c. 430 increased from one thousand to five thousand the maximum population eligibility under which a town could classify its selectmen as special municipal employees.

[4] See, *Registrar of Motor Vehicles v. Board of Appeal*, 1981 Mass Adv. Sh. 415, 416 N.E. 2d 1373 (1981); *Commonwealth v. Hayes*, 372 Mass. 505 (1977).